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the discretion of the court may defeat the vendee's bill. See authorities collected in WILLISTON ON CONTRACTS, Vol. II, Sec. 791. In regard to the principal case, since the South Dakota court has not hitherto committed itself to a policy of strict construction, this discretionary power might well have been exercised in favor of the vendee. The sum forfeited was not large, it is true, but he had acted in good faith, payment had been made in a form reasonably common in business dealings, and there was no evidence of fluctuating land value or other undue hardship on the vendor. The case may well be contrasted with *Compton v. Weber*, (Ill., 1921), 129 N. E. 764, a recent Illinois case, in which a vendor to whom \$3,000 of a \$25,000 purchase price had been paid, refused to accept a check in payment of the balance, although that form of payment had been accepted for the prior installment, and demanded legal tender at so late an hour that he well knew it could not be procured. The Illinois court, although committed to the doctrine of strict construction, refused to countenance what it termed "a sharp business trick" by the vendor, especially since the latter had, by accepting a check for the prior payment, led the vendee to believe that the same form of payment would be accepted again. In the Illinois case the sum which would have been forfeited was greater but on principle it would seem that the principal case should reach the same result.

STATUTORY CONSTRUCTION—U. S. MAIL BOX NOT A "POST OFFICE," "BRANCH POST OFFICE," OR "POST OFFICE STATION."—A copy of a summons, complaint, affidavits, and order for publication which had been sealed up in an envelope directed to defendant, a foreign corporation, were deposited in a letter box maintained by the United States government in an office building. A statute authorized the order of publication for constructive service to direct a mailing at "a post office," "branch post office," or "post office station." *Held*, defendant's motion to vacate and set aside the judgment should be granted because mailing the summons by placing it in a post office box did not comply with the requirements of the statute. *B. Berman, Inc. v. Amer. Fruit Distr. Co. of Calif.*, (N. Y., 1921), 186 N. Y. Supp. 376.

By looking at the code as a whole, the court concluded that the Legislature intended to allow the summons to be mailed only in the three sorts of places named. The term "letter box" was known to the legislators since they used it in a different connection as pointed out by the code itself in section 797. Consequently it seemed to the court that in the case of serving a summons the legislative intent that it could not be placed in a mail box was very clearly expressed. A similar method of statutory construction is found in *McArthur v. Moffett*, 143 Wis. 564.

TRIAL—INSTRUCTIONS AS TO DAMAGES.—The jury returned a verdict of \$1,500,—the amount sued for,—where testimony had been introduced for but \$597.90. The trial court instructed the jury that they should allow such damages as the preponderance of the evidence showed the plaintiffs to have sustained, not to exceed the sum of \$1,500,—the damages named in the com-